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11 Attorneys for Defendants,
12 CITY OF SAN JOSE and ROBERT DAVIS

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 NOREEN SALINAS,

17 Plaintiff,

18 v.

19 CITY OF SAN JOSE, CHIEF ROBERT
20 DAVIS, TASER INTERNATIONAL, INC.,
21 and DOES 1 TO 10, inclusive,

22 Defendants.

Case Number: C08-02625 RS

**DEFENDANTS' ANSWER TO
COMPLAINT**

JURY TRIAL DEMANDED

23 Defendants, City of San Jose and Robert Davis, hereby respond to the Complaint of
24 Plaintiff Noreen Salinas in the above-entitled matter as follows:

25 1) Answering Paragraph 1 of Plaintiff's Complaint, Defendants admit that venue is
26 proper in this district.

27 2) Answering Paragraph 2 of Plaintiff's Complaint, Defendants admit that this
28 Court has jurisdiction over Plaintiff's federal claims. As to the remaining allegations
contained in Paragraph 2, Defendants lack sufficient information and belief, and therefore,
deny said allegations.

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1 3) Answering Paragraph 3 of Plaintiff's Complaint, Defendants lack sufficient
2 information and belief, and therefore, deny the allegations contained therein.

3 4) Answering Paragraph 4 of Plaintiff's Complaint, Defendants lack sufficient
4 information and belief, and therefore, deny the allegations contained therein.

5 5) Answering Paragraph 5 of Plaintiff's Complaint, Defendants lack sufficient
6 information and belief, and therefore, deny the allegations contained therein.

7 6) Answering Paragraph 6 of Plaintiff's Complaint, Defendants lack sufficient
8 information and belief, and therefore, deny the allegations contained therein.

9 7) Answering Paragraph 7 of Plaintiff's Complaint, Defendants admit the
10 allegations contained therein.

11 8) Answering Paragraph 8 of Plaintiff's Complaint, Defendants admit that the City
12 of San Jose operates a Police Department. Defendants further admit that any actions
13 performed by the individually named Defendant Police Officer were performed in the course
14 and scope of his employment with the City of San Jose and was done under color of law.
15 Defendants deny the remaining allegations contained in Paragraph 8.

16 9) Answering Paragraph 9 of Plaintiff's Complaint, Defendants lack sufficient
17 information and belief, and therefore, deny the allegations contained therein.

18 10) Answering Paragraph 10 of Plaintiff's Complaint, Defendants lack sufficient
19 information and belief, and therefore, deny the allegations contained therein.

20 11) Answering Paragraph 11 of Plaintiff's Complaint, Defendants admit that
21 Defendant Chief Robert Davis was at all relevant times mentioned in Plaintiff's Complaint the
22 Chief of the San Jose Police Department and that, as such, he possessed the power and
23 authority to prescribe rules and practices concerning the operation of the San Jose Police
24 Department. Defendants deny the remaining allegations contained in Paragraph 11.

25 12) Answering Paragraph 12 of Plaintiff's Complaint, Defendants lack sufficient
26 information and belief, and therefore, deny the allegations contained therein.

27 13) Answering Paragraph 13 of Plaintiff's Complaint, Defendants lack sufficient
28 information and belief, and therefore, deny the allegations contained therein.

1 14) Answering Paragraph 14 of Plaintiff's Complaint, Defendants lack sufficient
2 information and belief, and therefore, deny the allegations contained therein.

3 15) Answering Paragraph 15 of Plaintiff's Complaint, Defendants admit that Chief
4 Robert Davis was acting under color of law and in the course and scope of his employment
5 with the City of San Jose. Defendants deny the remaining allegations contained in
6 Paragraph 15.

7 16) Answering Paragraph 16 of Plaintiff's Complaint, Defendants deny the
8 allegations contained therein.

9 17) Answering Paragraph 17 of Plaintiff's Complaint, Defendants admit that Plaintiff
10 Noreen Salinas filed a claim with the City of San Jose. Defendants deny the remaining
11 allegations contained in Paragraph 17.

12 18) Answering Paragraph 18 of Plaintiff's Complaint, Defendants admit that
13 decedent Steve Salinas was inside a hotel room at 1488 North First Street in San Jose on
14 May 25, 2007. Defendants deny the remaining allegations contained in Paragraph 18.

15 19) Answering Paragraph 19 of Plaintiff's Complaint, Defendants deny the
16 allegations contained therein.

17 20) Answering Paragraph 20 of Plaintiff's Complaint, Defendants deny the
18 allegations contained therein.

19 21) Answering Paragraph 21 of Plaintiff's Complaint, Defendants admit that
20 decedent was tasered. Defendants deny the remaining allegations contained in
21 Paragraph 21.

22 22) Answering Paragraph 22 of Plaintiff's Complaint, Defendants deny the
23 allegations contained therein.

24 23) Answering Paragraph 23 of Plaintiff's Complaint, Defendants deny the
25 allegations contained therein.

26 24) Answering Paragraph 24 of Plaintiff's Complaint, Defendants incorporate their
27 answers to Paragraphs 1 through 23 as if fully set forth herein.

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1 25) Answering Paragraph 25 of Plaintiff's Complaint, Defendants lack sufficient
2 information and belief, and therefore, deny the allegations contained therein.

3 26) Answering Paragraph 26 of Plaintiff's Complaint, Defendants lack sufficient
4 information and belief regarding the §1983 Successor in Interest claims against Does 5-10,
5 inclusive. Defendants deny the remaining allegations contained in Paragraph 26.

6 27) Answering Paragraph 27 of Plaintiff's Complaint, Defendants lack sufficient
7 information and belief regarding individual claims against Defendants Does 5-10 pursuant to
8 42 U.S.C. § 1983. Defendants deny the remaining allegations contained in Paragraph 27.

9 28) Answering Paragraph 28 of Plaintiff's Complaint, Defendants deny the
10 allegations contained therein.

11 29) Answering Paragraph 29 of Plaintiff's Complaint, Defendants deny the
12 allegations contained therein.

13 30) Answering Paragraph 30 of Plaintiff's Complaint, Defendants incorporate their
14 answers to Paragraphs 1 through 29 as if fully set forth herein.

15 31) Answering Paragraph 31 of Plaintiff's Complaint, Defendants lack sufficient
16 information and belief, and therefore, deny the allegations contained therein.

17 32) Answering Paragraph 32 of Plaintiff's Complaint, Defendants deny the
18 allegations contained therein.

19 33) Answering Paragraph 33 of Plaintiff's Complaint, Defendants admit that Chief
20 Robert Davis was an employee of Defendant City of San Jose and that he acted under color
21 of law. Defendants deny the remaining allegations contained in Paragraph 33.

22 34) Answering Paragraph 34 of Plaintiff's Complaint, Defendants deny the
23 allegations contained therein.

24 35) Answering Paragraph 35 of Plaintiff's Complaint, Defendants deny the
25 allegations contained therein.

26 36) Answering Paragraph 36 of Plaintiff's Complaint, Defendants deny the
27 allegations contained therein.

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1 37) Answering Paragraph 37 of Plaintiff's Complaint, Defendants deny the
2 allegations contained therein.

3 38) Answering Paragraph 38 of Plaintiff's Complaint, Defendants deny the
4 allegations contained therein.

5 39) Answering Paragraph 39 of Plaintiff's Complaint, Defendants deny the
6 allegations contained therein.

7 40) Answering Paragraph 40 of Plaintiff's Complaint, Defendants deny the
8 allegations contained therein.

9 41) Answering Paragraph 41 of Plaintiff's Complaint, Defendants deny the
10 allegations contained therein.

11 42) Answering Paragraph 42 of Plaintiff's Complaint, Defendants deny the
12 allegations contained therein.

13 43) Answering Paragraph 43 of Plaintiff's Complaint, Defendants deny the
14 allegations contained therein.

15 44) Answering Paragraph 44 of Plaintiff's Complaint, Defendants deny the
16 allegations contained therein.

17 45) Answering Paragraph 45 of Plaintiff's Complaint, Defendants deny the
18 allegations contained therein.

19 46) Answering Paragraph 46 of Plaintiff's Complaint, Defendants deny the
20 allegations contained therein.

21 47) Answering Paragraph 47 of Plaintiff's Complaint, Defendants incorporate their
22 answers to Paragraphs 1 through 46 as if fully set forth herein.

23 48) Answering Paragraph 48 of Plaintiff's Complaint, Defendants lack sufficient
24 information and belief, and therefore, deny the allegations contained therein.

25 49) Answering Paragraph 49 of Plaintiff's Complaint, Defendants deny the
26 allegations contained therein.

27 50) Answering Paragraph 50 of Plaintiff's Complaint, Defendants deny the
28 allegations contained therein.

1 51) Answering Paragraph 51 of Plaintiff's Complaint, Defendants deny the
2 allegations contained therein.

3 52) Answering Paragraph 52 of Plaintiff's Complaint, Defendants deny the
4 allegations contained therein.

5 53) Answering Paragraph 53 of Plaintiff's Complaint, Defendants deny the
6 allegations contained therein.

7 54) Answering Paragraph 54 of Plaintiff's Complaint, Defendants deny the
8 allegations contained therein.

9 55) Answering Paragraph 55 of Plaintiff's Complaint, Defendants deny the
10 allegations contained therein.

11 56) Answering Paragraph 56 of Plaintiff's Complaint, Defendants incorporate their
12 answers to Paragraphs 1 through 55 as if fully set forth herein.

13 57) Answering Paragraph 57 of Plaintiff's Complaint, Defendants lack sufficient
14 information and belief, and therefore, deny the allegations contained therein.

15 58) Answering Paragraph 58 of Plaintiff's Complaint, Defendants deny the
16 allegations contained therein.

17 59) Answering Paragraph 59 of Plaintiff's Complaint, Defendants incorporate their
18 answers to Paragraphs 1 through 58 as if fully set forth herein.

19 60) Answering Paragraph 60 of Plaintiff's Complaint, Defendants lack sufficient
20 information and belief, and therefore, deny the allegations contained therein.

21 61) Answering Paragraph 61 of Plaintiff's Complaint, Defendants deny the
22 allegations contained therein.

23 62) Answering Paragraph 62 of Plaintiff's Complaint, Defendants incorporate their
24 answers to Paragraphs 1 through 61 as if fully set forth herein.

25 63) Answering Paragraph 63 of Plaintiff's Complaint, Defendants deny the
26 allegations contained therein.

27 64) Answering Paragraph 64 of Plaintiff's Complaint, Defendants deny the
28 allegations contained therein.

1 65) Answering Paragraph 65 of Plaintiff's Complaint, Defendants deny the
2 allegations contained therein.

3 66) Answering Paragraph 66 of Plaintiff's Complaint, Defendants deny the
4 allegations contained therein.

5 67) Answering Paragraph 67 of Plaintiff's Complaint, Defendants deny the
6 allegations contained therein.

7 68) Answering Paragraph 68 of Plaintiff's Complaint, Defendants incorporate their
8 answers to Paragraphs 1 through 67 as if fully set forth herein.

9 69) Answering Paragraph 69 of Plaintiff's Complaint, Defendants deny the
10 allegations contained therein.

11 70) Answering Paragraph 70 of Plaintiff's Complaint, Defendants deny the
12 allegations contained therein.

13 71) Answering Paragraph 71 of Plaintiff's Complaint, Defendants deny the
14 allegations contained therein.

15 72) Answering Paragraph 72 of Plaintiff's Complaint, Defendants deny the
16 allegations contained therein.

17 73) Answering Paragraph 73 of Plaintiff's Complaint, Defendants incorporate their
18 answers to Paragraphs 1 through 72 as if fully set forth herein.

19 74) Answering Paragraph 74 of Plaintiff's Complaint, Defendants deny the
20 allegations contained therein.

21 75) Answering Paragraph 75 of Plaintiff's Complaint, Defendants deny the
22 allegations contained therein.

23 76) Answering Paragraph 76 of Plaintiff's Complaint, Defendants incorporate their
24 answers to Paragraphs 1 through 75 as if fully set forth herein.

25 77) Answering Paragraph 77 of Plaintiff's Complaint, Defendants lack sufficient
26 information and belief, and therefore, deny the allegations contained therein.

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78) Answering Paragraph 78 of Plaintiff's Complaint, Defendants admit that Chief Robert Davis acted under color of law. Defendants deny the remaining allegations contained in Paragraph 78.

79) Answering Paragraph 79 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

80) Answering Paragraph 80 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

81) Answering Paragraph 81 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

82) Answering Paragraph 82 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

83) Answering Paragraph 83 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

84-92) Defendants City of San Jose and Chief Robert Davis do not respond to these allegations as they are not directed against them.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, these answering Defendants allege that the Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, these answering Defendants allege that any harm Plaintiffs suffered was the result of negligent or otherwise wrongful conduct of persons other than these Defendants and that the conduct of persons other than these Defendants were the sole and proximate cause of the injuries and damages alleged by Plaintiffs.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, these answering Defendants allege that all actions taken, including actions of Doe Defendants, were undertaken in good faith and with a reasonable belief that the actions were valid, necessary, constitutionally proper and objectively reasonable for a police officer in the same circumstances, and that

1 such actions were not violations of clearly established constitutional law, entitling the
2 individual Defendants to qualified immunity.

3 AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, these answering Defendants
4 allege that they are immune from the state law causes of action pursuant to Government
5 Code Sections 800-1000.

6 AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, these answering Defendants allege
7 they are immune from the state law causes of action pursuant to Government Code Section
8 815.2(b) and Section 820.8 granting immunity for an injury caused by the act or omission of
9 another person.

10 AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, these answering Defendants
11 allege that Plaintiffs' Complaint is barred in that Plaintiffs failed to comply with the claims filing
12 provisions of Government Code § 900, et seq.

13 AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, these answering Defendants
14 allege that Plaintiffs' Complaint is barred by the applicable statutes of limitation.

15 AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE, these answering Defendants
16 allege that their conduct was privileged and not wrongful since they were acting in self-
17 defense.

18 AS AND FOR A NINTH AFFIRMATIVE DEFENSE, these answering Defendants
19 allege that their conduct was privileged and not wrongful since they were acting in the
20 defense of others.

21 AS AND FOR A TENTH AFFIRMATIVE DEFENSE, these answering Defendants
22 allege that death of the decedent was the result of his negligent and/or criminal conduct and
23 that said actions of decedent were the sole and proximate cause of the injuries and damages
24 alleged by the Plaintiffs in this case.

25 AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE, these answering
26 Defendants allege that the individual Defendants, including those who are presently
27 designated as Does, are entitled to immunity from Plaintiffs' Complaint by virtue of the
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provisions of Government Code of the State of California, Section 800 through 1000, including, but not limited to Sections 820.2, 820.4, 820.6, 820.8, 821, 821.6 and 822.2.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE, these answering Defendants allege that the treatment of decedent was lawful and justified under the facts of the case.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, these answering Defendants allege that they are protected by the affirmative defenses provided by California Penal Code Sections 197, 834(a), 835 and 835(a).

WHEREFORE, Defendants pray:

1. That Plaintiff take nothing by her Complaint;
2. That Plaintiff's Complaint be dismissed with prejudice;
3. That Defendants be awarded their costs of suit, including attorneys fees incurred herein; and
4. For such other and further relief as the Court deems proper.

Respectfully submitted,

Dated: August 28, 2008

RICHARD DOYLE, City Attorney

By: /S/
MICHAEL J. DODSON
Sr. Deputy City Attorney

Attorneys for Defendants,
CITY OF SAN JOSE and ROBERT DAVIS

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REQUEST FOR JURY TRIAL

Defendants City of San Jose and Robert Davis, hereby request a jury trial in this action.

Respectfully submitted,

Dated: August 28, 2008

RICHARD DOYLE, City Attorney

By: /S/
MICHAEL J. DODSON
Sr. Deputy City Attorney

Attorneys for Defendants,
CITY OF SAN JOSE and ROBERT DAVIS